

December 28, 2005

Carl E. Ashman, Grand Lodge Rep.
District Lodge 34, International
Association of Machinists &
Aerospace Workers, AFL-CIO
Executive Plaza III
135 Merchant Street, Suite 265
Cincinnati, OH 45246

RE: Area Wide Protective, Inc.
Case No. 8-CA-36228 and 8-CA-36239

Dear Mr. Ashman:

The Region has carefully investigated and considered your charges against Area Wide Protective, Inc. alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charges for the following reasons:

The investigation as to Case No. 8-CA-36228 revealed insufficient evidence to establish that the Employer terminated the employment of its employees Berisko, Ellis and Kisner because of any Union activity in which they may have engaged. Rather, investigation disclosed that employees, including Berisko, Ellis and Kisner, were randomly selected by an independent drug testing company for testing, a practice which is permitted under the terms of the collective bargaining agreement. The alleged discriminates were discharged based upon the results of the testing. There is no evidence that the drug testing policy was discriminatorily applied.

With regard to Case No. 8-CA-36239, investigation revealed that the Employer conducted a previously scheduled safety meeting on November 17, 2005 the same day that an election was conducted in Case No. UD-303. However, there is no evidence that the Employer engaged in any unlawful electioneering or campaigning during the meeting, nor was there any evidence that any of the Employer's actions undermined the election process.

Therefore, I am refusing to issue a complaint on these matter.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. If you wish to file an appeal, your attention is directed to the following:

Appeal Due Date: The appeal must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. on January 6, 2006.** However, if you

mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date. The appeal **MAY NOT** be filed by facsimile transmission.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extensions of time. A request for an extension of time to file an appeal **must be received** on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to dismiss the charges were incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Address for Appeal: The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, N.W., Washington, D.C. 20570. You should send a copy of the appeal to me.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Frederick J. Calatrello
Regional Director

FJC:jp

cc: Office of Appeals
N.L.R.B.
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